Action Minutes
Special Joint Meeting
Landmarks Preservation Commission
Zoning Adjustments Board

Special Meeting Start Time
Thursday, July 2, 2009 -- 6:00 pm
(LPC’s regular meeting will occur after conclusion of the Special Joint LPC-ZAB meeting, and not before 7:00 p.m.)

City Council Chambers, 2134 Martin Luther King Junior Way.
Berkeley, CA 94704 (Wheelchair Accessible)

The purpose of this Special Joint Meeting of the Landmarks Preservation Commission and the Zoning Adjustments Board is have each Board/Commission to receive testimony from the public at the same public meeting where each Board/Commission can potentially take action on the proposed project.

Public Testimony Guidelines
The Chair may limit the number of speakers and the length of time allowed to each speaker. To speak at a public hearing, complete a speaker card and submit to Planning Staff (1) as early as possible at the meeting, or (2) at the Permit Service Center, 2120 Milvia Street, before 5:00 PM on the day of the hearing.

The Board / Commission encourages the public to submit comments in writing or by email, in advance of the meeting. See Correspondence and Notice of Decision Requests at the end of this Agenda for procedures.

Planning and Development Department, Land Use Division

Roll Call:
LPC:
Present: C. Linvill, A. Hall, M. Ng, A. Wagley, R. Johnson, C. Olson, G. Parsons, S. Winkel
Absent: A. Pietras

ZAB:
Absent: M. Cohen, D. Koon
Substitute: H. Al-Hadithy (for D. Koon)

Public Attendance: ~100
Public Comment  
Each Speaker is limited to a maximum of three minutes.

Ex Parte Communication Disclosures:  
H. Al-Hadithy: Spoke to Magic Gardens and Aquatic Park Childcare Center regarding their communication with Wareham Development.

New Hearings:

740 Heinz – Former Copra Warehouse  
Use Permit and Variance #05-10000017 & Demolition Permit #05-40000019 to demolish the existing single-story, 10,000 square foot City of Berkeley Landmark (the Copra Warehouse) to construct a building with 82,000 square feet of research and development laboratories and 10,000 square feet of warehouse floor area and a 49-space sub-surface garage; (MU-LI, Mixed-Use Light Industrial District).

Applicant: Chris Barlow, Wareham Development  
Staff Planner: Greg Powell, Senior Planner

1. Joint Public Hearing for 740 Heinz

2. ZAB-LPC Discussion of Final EIR

3. ZAB Certification of Final EIR

<table>
<thead>
<tr>
<th>Recommendation: CERTIFY FINAL EIR</th>
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<tbody>
<tr>
<td>Action: APPROVED</td>
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<tr>
<td>Motion: (E. Mikiten, J. Anthony)</td>
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<tr>
<td>ZAB Vote: (8-0-0-1; Absent: M. Cohen)</td>
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4. LPC Approval of Demolition Permit #05-40000019

<table>
<thead>
<tr>
<th>Recommendation: APPROVE DEMOLITION PERMIT</th>
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</thead>
<tbody>
<tr>
<td>Action: DECLINED TO APPROVE</td>
</tr>
<tr>
<td>Motion: (C. Olsen, A. Wagley)</td>
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<tr>
<td>LPC Vote: (7-1-0-1; No: M. Ng, Absent: A. Pietras)</td>
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</tbody>
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5. **ZAB Approval of Use Permit and Variance #05-10000017**

<table>
<thead>
<tr>
<th>Recommendation:</th>
<th>ZAB ADOPT CEQA FINDINGS AND APPROVE USE PERMIT AND VARIANCE</th>
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<tbody>
<tr>
<td>Action:</td>
<td>APPROVED</td>
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<tr>
<td>Motion:</td>
<td>(B. Allen, J. Anthony)</td>
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<tr>
<td>ZAB Vote:</td>
<td>(5-3-0-1; No: H. Al-Hadithy, E. Mikiten, S. Shumer; Absent: M. Cohen)</td>
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</tbody>
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[Approved for posting by Steven D. Ross, Secretary, Zoning Adjustments Board]

**Correspondence and Notice of Decision Requests**

- Staff will not deliver to Board \ Commission members any additional written (or e-mail) materials received after 12:00 noon on the day of the meeting.
- Members of the public may submit written comments themselves early in the meeting. To distribute correspondence at the meeting, please provide 15 copies and submit to the ZAB \ LPC Clerk just before or at the beginning of the meeting.
- Written comments, or a request for a Notice of Decision should be directed to the ZAB Secretary or LPC Secretary at: Land Use Planning Division (Attn: ZAB Secretary or LPC Secretary) 2120 Milvia Street, Berkeley, CA 94704 OR at zab@ci.berkeley.ca.us

**Communication Access**

To request a meeting agenda in large print, Braille, or on cassette, or to request a sign language interpreter for the meeting, call the Current Planning Division at 981-7410 (voice) or 981-7474 (TDD); at least five (5) working days notice will ensure availability.

**Legal Notice Concerning Your Legal Rights**

If you object to a decision by the Zoning Adjustments Board or Landmarks Preservation Commission to approve or deny a permit for a project, the following requirements and restrictions apply:

1. **ZAB Decision**: You must appeal to the City Council within fourteen (14) days after the Notice of Decision of the action of the Zoning Adjustments Board is mailed. It is your obligation to notify the Current Planning Division in writing to receive a Notice of Decision when it is completed.
2. **LPC Decision**: You must appeal to the City Council within 15 days after the Notice of Decision of the action of the Landmarks Preservation Commission is mailed. It is your obligation to inquire with the Land Use Planning Division (981-7410) to determine when a Notice of Decision is mailed. Pursuant to Section 3.24.300 of the Landmarks Preservation Ordinance: “An appeal may be taken to the City Council by the City Council on its own motion, by motion of the Planning Commission, by motion of the Civic Art Commission, by the verified application of the owners of the property or their authorized agents, or by the verified application of at least fifty residents of the City aggrieved or affected by any determination of the commission made under the provisions of this chapter”. Any appeal submitted by the public must be in writing, specifying the reasons for the appeal. The appeal fee if filed by the applicant is $1156. If filed by a person other than the applicant, the fee is $63.00. The City Clerk’s Department is located on the first floor at 2180 Milvia Street, Berkeley, CA 94704; Phone (510) 981-6900.
3. No lawsuit challenging a City decision to deny (Code Civ. Proc. Section 1094.6(b) or approve (Gov. Code Section 65009(c)(5)) a Landmark/Structure of Merit Designation may be filed more than 90 days after the date the decision becomes final, as defined in Code of Civil Procedure Section 1094.6(b). Any lawsuit not filed within that 90-day period will be barred.

4. Pursuant to Code of Civil Procedure, Section 1094.6(b), no lawsuit challenging a City Council decision to deny a permit or variance may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure, Section 1094.6(b), which has been adopted by the City. Any lawsuit not filed within that ninety (90) day period will be barred.

5. Pursuant to Government Code, Section 65009(c)(5), no lawsuit challenging a City Council decision to approve (with or without conditions) a permit or variance may be filed more than ninety (90) days after the date the decision becomes final, as defined in Code of Civil Procedure, Section 1094.6(b), which has been adopted by the City. Any lawsuit not filed within that ninety (90) day period will be barred.

6. If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a “taking” of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:
   A. That this belief is a basis of your appeal.
   B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
   C. All evidence and argument in support of your belief that the decision or condition constitutes a “taking” as set forth above.
If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.